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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555 (JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

March 23, 2011
10:08 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

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HEARING re Debtors' Motion for an Order Modifying the Automatic Stay to Allow Settlement Payments Under 2007-2008 Directors and Officers Insurance Policy by Zurich American Insurance Co.

HEARING re Motion of Edgewood Management LLC for an Order Directing Lehman Brothers Holdings Inc. to Release and Return Non-Estate Property

HEARING re Motion of Debtors for Approval of the Sales of Shares of Quadrant Structured Products Company, Ltd.

HEARING re Motion of LBHI for Approval of Two Note Purchase Agreements with the Insolvency Administrator of Lehman Brothers Bankhaus AH (In Insolvenz)

CHAPTER 15 PROCEEDINGS: IN RE LEHMAN BROTHERS BANKHAUS AG (IN INSOLVENZ):

HEARING re Motion by LB Bankhaus AG for an Order Approving Agreements with Lehman Brothers Holdings Inc. and Authorizing the Sale of Certain Notes Free and Clear of All Liens, Claims, Encumbrances and Interests

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Good morning. Be seated, please.

MR. KRASNOW: Good morning, Your Honor. Richard Krasnow, Weil Gotshal & Manges, on behalf of the Chapter 11 debtors. Your Honor, in connection with this Lehman omnibus hearing, the debtors filed an amended agenda last night. And if it's acceptable to the Court, I will simply address the motions in the order in which they appear in the amended agenda.

THE COURT: That's fine.

MR. KRASNOW: Your Honor, the first matter -- well, I should note at the outset, Your Honor, that all of the matters that are before the Court this morning are uncontested. So this should be a relatively short hearing.

The first motion that is to be considered by the Court today is the debtors' motion for an order modifying the automatic stay to allow settlement payments under 2007-2008 Directors and Officers Insurance policy issued by Zurich American Insurance. That's docket number 14707.

Your Honor, this is, I believe, the seventh motion of this type that we have filed with the Court where we're seeking a modification of the stay in order to allow the D&O carrier to make payments in connection with various settlements where the defendants are former Lehman employees who are covered by those policies.

1 This particular matter relates to two separate
2 arbitration settlements where the proposed payments with
3 respect to both matters in the aggregate are approximately 2.1
4 million dollars. Your Honor has previously considered, as I've
5 noted, motions similar to this. There is no opposition. And
6 so, for the reasons we've set forth in the motion, we would
7 request that the relief be granted.

8 THE COURT: The relief is granted.

9 MR. KRASNOW: Thank you, Your Honor. The next matter
10 on the agenda is the motion of Edgewood Management LLC. And
11 this, Your Honor, is being handled by my colleague, Mr.
12 Goldberg.

13 MR. GOLDBERG: Good morning, Your Honor. Lee Goldberg
14 for the Chapter 11 debtors. Your Honor, I have a copy of the
15 stipulation if you would like me to hand that up.

16 THE COURT: Please hand it up. Thank you.

17 MR. GOLDBERG: Your Honor, before the Court is the
18 motion of Edgewood Management LLC, docket number 13063. The
19 motion seeks the return of \$505,936.13 from LBHI to Edgewood
20 and -- Edgewood Management LLC which is acting on behalf of its
21 client, Edgewood Growth Fund. Upon consideration and review of
22 the facts and the applicable law in this case, the debtors and
23 Edgewood have determined that it is in the best interest of all
24 parties to agree to the settlement that is before the Court.
25 LBHI, having Your Honor's review, will turn over 400,000

1 dollars to Edgewood for the -- in satisfaction of the matter
2 set forth in the motion.

3 THE COURT: That's fine. There are no objections.
4 The stipulation is approved.

5 MR. GOLDBERG: Thank you, Your Honor.

6 MR. KRASNOW: Your Honor, the third matter on today's
7 calendar relates Quadrant Structured Products. And this matter
8 is being handled by the firm of Jones Day on behalf of the
9 Chapter 11 debtors.

10 MR. BLACK: Good morning, Your Honor. Carl Black of
11 Jones Day on behalf of the Chapter 11 debtors. Item 3 on
12 today's agenda is the uncontested motion of Lehman Brothers
13 Holding Inc. and Lehman Commercial Paper Inc., docket number
14 14708, for an order approving the sale of 80,000 shares of
15 Quadrant Structured Products Company Ltd. representing a twenty
16 percent interest in Quadrant to Quadrant for ninety million in
17 cash consideration. In connection with the authorization to
18 sell the shares, the debtors also seek a waiver of the
19 fourteen-day stay imposed under Bankruptcy Rule 6004(h) and a
20 finding that the purchaser acted in good faith and is entitled
21 to the protections of 363(m). The motion was filed on February
22 28th. Proper notice of the motion was provided and service
23 effectuated on the general and special service parties as well
24 as other parties entitled to receive notice under General Order
25 M-383 and the case management order applicable in these Chapter

1 11 cases. Proof of such service is set forth in the
2 certificate of service that has been filed with the Court on
3 March 4th.

4 The official committee of unsecured creditors filed a
5 statement in support of the motion on March 18th. And no
6 objections to the motion have been filed or otherwise raised.

7 Your Honor, also present here today and available for
8 questions is Andrew Grapkowski, a managing director in the
9 private equity and principal investment groups of LAMCO LLC.
10 Attached to the motion is Mr. Grapkowski's written declaration
11 and support. If Your Honor wishes, the debtors would offer
12 this declaration into evidence as his testimony for the
13 hearing. Otherwise, we're happy to make a proffer.

14 THE COURT: You can do that whichever way you prefer.
15 I've reviewed the papers and you can either rely on the
16 declaration as evidentiary support or you can make a proffer of
17 it.

18 MR. BLACK: We would ask to have the declaration
19 entered into evidence, Your Honor.

20 THE COURT: It's admitted then.

21 MR. BLACK: Thank you.

22 (Declaration of Andrew Grapkowski was hereby received into
23 evidence as of this date.)

24 THE COURT: Given the lack of objection and the
25 evidence in support of the transaction, it's approved.

1 MR. BLACK: Thank you, Your Honor. Hand the order up
2 at the conclusion?

3 THE COURT: Yes.

4 MR. BLACK: Thank you.

5 MR. KRASNOW: Your Honor, Richard Krasnow of Weil
6 Gotshal & Manges on behalf of the Chapter 11 debtors. The next
7 two matters and the last two matters on today's calendar are,
8 if you will, companion motions. There is the motion filed by
9 the Chapter 11 debtors for approval of LBHI's purchase of three
10 notes referred to as the Spruce-Verano and SASCO notes from the
11 insolvency administrator of Lehman Brothers Bankhaus, the
12 former Lehman Brothers bank in Germany that is the subject of a
13 separate insolvency proceeding in Germany, for an aggregate
14 purchase price of 957 million dollars subject to one possible
15 adjustment which I will address shortly, Your Honor. The
16 companion motion is a motion filed by the insolvency
17 administrator in his pending Chapter 15 case before the Court
18 for authority to sell the notes to LBHI which notes, as
19 reflected in the pleadings that the administrator has filed,
20 are located in the United States free and clear of all liens,
21 claims and encumbrances. So we would suggest or request that
22 Your Honor, if you will, consider both motions concurrently
23 since one is very much tied to the other.

24 We have filed with the Court in connection with the
25 relief that we are requesting as attachments to the initial

1 motion that we filed the SASCO purchase agreement, which is
2 Exhibit A to the motion, the Spruce-Verano purchase agreement,
3 which is Exhibit B to the motion, and an amended and restated
4 settlement agreement which is characterized in the motion as a
5 plan settlement agreement. That, Your Honor, is a document as
6 to which we are not seeking Court approval but there is an
7 element to that agreement that is tied to the SASCO purchase
8 agreement and the purchase price that the debtors will be
9 paying for the SASCO note. And I will address that as well.

10 Also attached to the motion is the declaration of
11 Daniel Ehrmann, a managing director of Alvarez & Marsal, in
12 support of the relief that's requested.

13 We also, this past Friday, filed two additional
14 documents, Your Honor. One was Amendment number 1 to the SASCO
15 purchase agreement and Amendment number 1 to what I refer to as
16 the plan settlement agreement. Those documents both go to one
17 aspect of a purchase price for the SASCO notes which, as I
18 said, I will address in a moment.

19 And lastly, Your Honor, on Monday we filed a revised
20 proposed order. And I will also get to why we filed that and
21 what the revisions relate to.

22 Your Honor, we were before the Court approximately a
23 little more than a year ago with respect to another rather
24 large transaction with Bankhaus that was approved by the Court.
25 There, too, there were no objections. Here, while there were

1 three filings made in connection with our motion, one by the
2 creditors' committee, one by the ad hoc group and one by the
3 LBI trustee. None of them are objections to the transaction
4 and two of them are styled as statements in support. While, if
5 Your Honor pleases, I will give the Court a general overview of
6 what these transactions contemplate, in light of the fact that
7 there are no objections, I would offer in evidence Mr.
8 Ehrmann's declaration in support of the relief we're requesting
9 as well as each of the agreements that I have alluded to
10 before.

11 THE COURT: That's fine. And I have no problem
12 admitting into evidence the documents that you have just
13 identified. In preparing for today's hearing, however, I'll
14 just share this with you, I'm a little concerned about this
15 transaction in that I don't have a good feel for how the price
16 was reached. And this is a private affiliate transaction.
17 There's no auction to test the market for the fair value.
18 Although that may not be a big issue for me, I'm also being
19 asked to approve the Bankhaus side of the transaction in which
20 the affidavits generally advert to the fact that an auction
21 could have taken place but did not, notes the applicable law in
22 Germany that appears to contemplate monetizing assets of this
23 sort. So there's a little question that from Bankhaus'
24 perspective based upon what I have reviewed, they're achieving
25 a fundamental objective of German insolvency practice but it's

1 not clear that that's the right number. Because I'm being
2 asked to approve both sides of a transaction in which both
3 parties to the transaction are talking about how beneficial it
4 is to them, it becomes difficult for me to understand how both
5 sides can be so right. Moreover, each of the parties who might
6 have been an objecting party has rallied around the transaction
7 which gives me a lot of comfort especially when those parties
8 include the creditors' committee and the sometimes oppositional
9 ad hoc committee.

10 So, I have no reason to get in the way of progress.
11 But I want, in the evidentiary record, to have a better
12 understanding as to how this can be good for everybody and how
13 the price was negotiated.

14 MR. KRASNOW: Your Honor, I'll be prepared to address
15 that certainly from the debtors' perspective. And I'm sure
16 Bankhaus will address that from their perspective. Just to
17 address one issue, as I'm sure they will describe further,
18 among the approvals that are required in order for this
19 transaction to close, in addition to an order from this Court
20 in our case and an order in the Chapter 15 approving it, there
21 must be approvals obtained in the German insolvency proceeding,
22 two in particular. One is the Bankhaus creditors' committee
23 and the other is the Bankhaus creditor assembly. I think I
24 have the correct terms.

25 THE COURT: I think you do have the correct terms.

1 MR. KRASNOW: And we have been advised and Bankhaus
2 can confirm that their creditors' committee has approved the
3 transaction. With respect to the assembly, that assembly
4 meeting will not occur until -- I believe is April 14. But
5 this transaction has, as we understand it, been vetted at least
6 by the Bankhaus creditors' committee.

7 But, Your Honor, let me, if I may, and this is
8 addressed in the papers, but let me give the overview to the
9 Court, describe to the Court the process which led us to be
10 before Your Honor today.

11 THE COURT: Okay.

12 MR. KRASNOW: As Your Honor may recall when we were
13 last here on a Bankhaus matter, that was a matter where the
14 debtors were, in the context of the settlement, addressing two
15 issues, if you will. One was who had ownership interest with
16 respect to certain loans and resolving disputes in that regard.
17 The transactions contemplated are acquiring those loans for
18 purchase price, if memory serves me, of a net of a little more
19 than a billion dollars.

20 In addition, it fixed certain claims that Bankhaus had
21 under what's called the Security and Collateral Agreement.
22 That's an agreement that was entered into by LBHI and Bankhaus
23 prior to the commencement of the case. And I would generally
24 characterize it as an agreement pursuant to which LBHI -- I'll
25 use the term loosely -- guarantied asset values on Bankhaus'

1 records such that LBHI was required to make payments,
2 characterized as cash collateral payments, to LBHI to the -- to
3 Bankhaus, excuse me, Your Honor -- to the extent that there was
4 a write-down in asset values, nonpayments on loans. Our
5 understanding was that this arrangement was entered into
6 basically to give the German regulators comfort about LBHI's
7 protecting the bank itself in terms of its assets.

8 The various loans which we acquired in that last
9 transaction were carried as assets on Bankhaus' books and
10 records. We purchased them at an amount that were less than
11 what they were carried at and therefore, in that transaction,
12 certain claims that they had under the SCA were allowed by the
13 Court.

14 Both prior to when that transaction occurred and
15 certainly thereafter, there were ongoing discussions and
16 negotiations with Bankhaus with respect to its claims. They
17 are a very significant creditor of LBHI. I believe their
18 asserted claims against LBHI was more than twenty billion
19 dollars. And thus, the resolution of those claims were
20 important for the purpose of this case moving forward in a
21 plan.

22 And so, in connection with our reviewing their claim,
23 and particularly their claim under the SCA, what naturally
24 followed from that is looking at the assets on their books and
25 records which would give rise to the claim. And among the

1 assets we focused on were the SASCO, Spruce and Verano notes.
2 And that was of particular interest to us because as reflected
3 in the motion, LBHI and Lehman Brothers Commercial Paper, LCPI,
4 have currently various notes that were issued by the SASCO,
5 Spruce and Verano structures. So there was already familiarity
6 on the part of the debtors as to what these notes were. These
7 notes were issued by special purpose vehicles and they are
8 secured, if you will, by participations in various loans,
9 mostly commercial loans on the Spruce and Verano side; mostly,
10 if not entirely, real estate related loans on the SASCO side.
11 And as those discussions pursued, there was a recognition
12 ultimately on our part that if we could agree at a reasonable
13 value of those notes, it would make sense to do more than just
14 fix their claim, Bankhaus' claim, against LBHI with respect to
15 any write-downs in values. But because we already had
16 Holdings, we knew about the underlying assets, we knew about
17 these other notes. to perhaps acquire the notes, assuming we
18 could do so at a reasonable price. They would, through that
19 acquisition -- LBHI would realize any potential enhancement in
20 value if we bought them at a discount. And by purchasing the
21 notes, we would ultimately end up in having control amongst the
22 debtors of a hundred percent of the capital structure of each
23 of those vehicles which would afford to us the ability to be
24 more efficient and maximize ultimate recoveries on the notes
25 with the underlying assets.

1 And so, there were negotiations that were pursued by
2 the parties over the last six months or so with respect to
3 exactly that issue. During the course of the negotiations as
4 is reflected in the statement which was filed by the creditors'
5 committee, we were in constant communications with the
6 committee as to how we were progressing because this was
7 potentially, and indeed is, a very significant transaction.

8 It's our understanding, but again the administrator
9 will address this, that during the course of this process and
10 particularly towards the end, they themselves undertook their
11 own analysis in their own fashion as to what potential values
12 were attributable to these notes. There were arduous
13 negotiations that took place over an extended period of time.
14 Information which we had with respect to these particular
15 assets were provided to Bankhaus as requested by them so that
16 they could be in a position to evaluate the offers that were
17 being made and wouldn't be in a position where they were
18 evaluating that information in a vacuum. And, Your Honor,
19 those negotiations ultimately gave rise to the agreements which
20 are currently before the Court.

21 On our side, as I said, Your Honor, we are familiar
22 with the notes. And we're familiar with the underlying assets
23 because of our current involvement. And the analysis which the
24 debtors undertook was not just looking at the notes but, in
25 fact, looking at the underlying assets, what we believe would

1 ultimately be realized and we believe that, indeed, we will
2 recoup our investment and then some with respect to these
3 particular notes. And I would say, Your Honor, the fact that
4 that's the case doesn't necessarily mean that Bankhaus isn't
5 getting a reasonable deal from their perspective. I don't
6 think they would expect us to buy these notes only to get our
7 purchase price back. There are other motivations that they
8 have for wanting to sell the notes and they themselves will
9 address that in their presentation.

10 Your Honor, with respect to the purchase prices, as
11 indicated in the papers, for Spruce and Verano, we're paying in
12 the aggregate 332 million dollars. It's broken down between
13 the two of them. With respect to Spruce, rough numbers, it's
14 around 193 million. With respect to Verano, it's close to 140
15 million. And that represents a discount of approximately
16 thirty percent to the current outstanding balances of those
17 notes.

18 With respect to SASCO, the purchase price that we
19 would pay now, if you will, upon closing is 625 million dollars
20 and that would represent a discount of approximately forty-two
21 percent to the outstanding principal amount.

22 The reason that the plan settlement agreement is
23 attached to the motion is with respect to the SASCO purchase
24 price. What the administrator indicated to us during the
25 course of the negotiations was that they were prepared -- he

1 was prepared to proceed with the transaction based on these
2 purchase prices because he was looking to not only monetize and
3 liquefy these assets so that he could make distributions to his
4 creditors, but he also looked at it in the context of the
5 claims that he would then have against LBHI under the SCA as a
6 result of this transaction. And in light of that, he told us
7 that if, at the end of the day, he didn't get the benefit of
8 his bargain under the plan settlement agreement, he didn't get
9 the claims allowed and whatever else is contemplated and
10 provided for under that agreement, that it would be appropriate
11 under those circumstances for him to get a higher purchase
12 price because he isn't getting the benefit of his bargain. And
13 I'm generally describing, Your Honor, what's provided for in
14 the plan settlement agreement. Obviously, as we say in the
15 motion, the terms of the transactions as set forth in the
16 agreements and the relevant provisions of the plan settlement
17 agreement, not my general description or what's said in the
18 motion, is what controls here. But what we agreed, in light of
19 that, which we thought was a reasonable proposition was that if
20 he doesn't get the benefit of his bargain that -- in a timely
21 fashion that we would be obligated to pay an additional
22 purchase price of a hundred million dollars with respect to the
23 SASCO note. And again, very generally speaking, and it's a
24 little more complicated than this, what's contemplated in this
25 regard is that if a plan -- and I say a plan -- is not

1 confirmed by December 31, 2012, and he terminates the plan
2 settlement agreement, because that's one of the conditions, if
3 you will, of the plan settlement agreement, then he's entitled
4 to the hundred million dollars.

5 Now when we looked at that, we felt it would not be
6 appropriate as a fiduciary to tie that confirmation requirement
7 simply to our plan. While we believe ours is the best plan on
8 file, and it will be amended to reflect the settlement as is
9 required under the plan settlement agreement, for reasons which
10 we may not be able to understand ourselves, there may be
11 another plan that is ultimately confirmed by the Court. And we
12 did not believe, as fiduciaries, that it would be appropriate
13 to have a provision in the agreement that was, if you will, a
14 poison pill with respect to somebody else's plan.

15 So, so long as, as I said a moment ago, a plan is
16 confirmed that incorporates the settlement and that's confirmed
17 by December 31 of 2012, and again there are other provisions in
18 the agreements, then he is not entitled to the hundred million
19 dollars. We believe that even were the estates required to pay
20 that hundred million dollars, this is still a deal, a
21 transaction which is very beneficial to the estates. And while
22 it reduces the discount, if you will, from around forty-two
23 percent to a little more than thirty some odd percent, it's
24 still a not insignificant discount to what we anticipate will
25 be the cash flows that will be generated from these particular

1 notes. And we believe that we will recover the full principal
2 amounts that are due and payable under these notes through that
3 which is produced under the underlying assets.

4 So, Your Honor, that is what led to our being here
5 today and the kind of analysis that we undertook. Now, Your
6 Honor, as I alluded to before, on Friday, we did file an
7 amendment to the SASCO purchase agreement and an amendment too
8 the plan settlement agreement. Those amendments arose from
9 discussions which occurred last week with the ad hoc group who
10 were, not surprisingly, particularly focused on the
11 circumstances which would give rise to the incremental hundred
12 million dollar payment. There were discussions over the course
13 of the week, various drafts of amendments that were circulated
14 amongst that group, ourselves and Bankhaus. And, ultimately,
15 that which was filed on Friday are documents which we were
16 advised the ad hoc group felt comfortable with. And again,
17 they were simply clarifications, if you will, of, for example,
18 what had to be in a competing plan for it to comport with the
19 requirements of the plan settlement agreement and the SASCO
20 agreement in terms of incorporating the settlement with the
21 trustee and certain other related issues. So we believe, based
22 upon what we've been advised, that at least the forms of the
23 documents are satisfactory to all concerned.

24 Your Honor, I would simply close by noting that we
25 think, and obviously, a number of our major stakeholders

1 concur, that from the debtors' perspective, these are very
2 beneficial transactions. And for the reasons set forth in our
3 motion and the declaration, we would request that the Court
4 approve it.

5 Perhaps, Your Honor -- if the Court has any questions,
6 obviously, I'm ready, willing and able to answer them.

7 THE COURT: I --

8 MR. KRASNOW: But, Your Honor, perhaps we should --

9 THE COURT: I'd like to hear a little bit more from
10 you, Mr. Krasnow, and then I'll hear from others.

11 MR. KRASNOW: Sure.

12 THE COURT: But I appreciate what you've said. Yet,
13 it doesn't entirely answer the question that I raised a little
14 earlier which is how these prices came to be. I understand
15 that the fundamental transaction that we're talking about here,
16 and it's complicated, calls for the debtors before me to obtain
17 control of the capital structure of SASCO, Spruce and Verano in
18 order to realize the value imbedded in the underlying asset
19 base without interference and that the fundamental concept that
20 underlies the transaction, as I understand it, is that the
21 right to realize incremental value is tied to the acquisition
22 of these notes at a discount. But that it's more complicated
23 than that because there are also relationship issues with
24 Bankhaus in the Bankhaus claim not entirely revealed to me in
25 the pending motion that I assume represents one of the reason

1 that from both the perspective of Bankhaus and the perspective
2 of the debtors, this transaction is viewed as more desirable
3 than a third party transaction.

4 MR. KRASNOW: Yes, Your Honor.

5 THE COURT: So that I am assuming that, for example,
6 from the perspective of Bankhaus, and I'll hear from them, as
7 seller of the notes, they're content with the transaction,
8 otherwise they wouldn't be advocating it to their creditors'
9 committee, their creditors' committee wouldn't be supporting it
10 and they wouldn't have a high degree of confidence that their
11 creditor assembly will ultimately approve it next month. So I
12 sense that there's more to this than just the amount being paid
13 for the notes.

14 MR. KRASNOW: Your Honor, let me provide you with a
15 little more information in light of Your Honor's observation.
16 Yes, as reflected in the motion, there is a connection between
17 our acquisition and the purchase price and the SCA claim which
18 is to be allowed under the plan and is referred to in the plan
19 settlement agreement. Again, we're not seeking approval of
20 that now. And the SCA claim would be allowed in an approximate
21 amount of six billion dollars. Now, not all of that relates to
22 this particular transaction. And to be specific, Your Honor,
23 with respect to this particular transaction or transactions,
24 that portion of the SCA claims that would -- will be allowed
25 under our to-be-amended plan that would reflect the settlement

1 that relates to these three notes aggregates 273 million
2 dollars. Now that's with respect to Spruce, Verano and SASCO,
3 and I can break that down if Your Honor desires which, in fact,
4 I will. With respect to the Spruce element, it's approximately
5 ten million dollars. With respect to Verano, it's seven
6 million. And with respect to SASCO, it's 256 million dollars.
7 So there is very much of a connection. And again, Your Honor,
8 that's the reason why the administrator insisted in the course
9 of the negotiations that if their claims -- his claims are not
10 allowed since he was prepared to take the number that
11 ultimately was agreed upon with respect to the purchase price
12 that he should have the right to get an incremental purchase
13 price in order to protect his creditors. And it was difficult
14 to argue against that.

15 I hope I've answered Your Honor's question.

16 THE COURT: You have. The only thing I don't have an
17 answer to that I still care about is how the pricing was
18 arrived at for these notes. There's approximately a thirty
19 percent discount as to Spruce-Verano and approximately a forty-
20 two percent discount as to SASCO in your recitation with a
21 SASCO adjustment that might be as much as a hundred million
22 dollars based upon conditions that we can't presently identify
23 fully. But what I'm simply trying to get a sense of, because
24 this is a transaction with moving parts, some of which are not
25 entirely clear to me, how were the notes priced.

1 MR. KRASNOW: Your Honor --

2 THE COURT: It's as simple as that.

3 MR. KRASNOW: Your Honor, with respect to Spruce and
4 Verano, which is a lot simpler, we believe that the notes we're
5 acquiring will be satisfied through payments made from the
6 underlying assets in a two to three year time frame. And I
7 should note, as we state in the papers, and I think it's
8 reflected in Mr. Ehrmann's declaration as well, the interest
9 rate on those notes are perhaps lower than what the market
10 might otherwise be. So with respect to Spruce and Verano, the
11 way we looked at it and the way we priced it took into account
12 a liquidity discount. So we proposed a number which reflected
13 that from our perspective and, again, the administrator will
14 respond from his perspective, but they do reflect in their
15 papers that there is a significant benefit for them in being
16 able to monetize assets quickly and liquefy them quickly so
17 that they can make distributions to the creditors. There's a
18 shorter time frame that they have in mind, as one would have
19 here if it were Chapter 7.

20 I think that with respect to SASCO, it's a bit more
21 complicated. We're dealing with real estate for the most part,
22 not the commercial loans. There are other issues attendant to
23 it. But the number that we -- I should say numbers because
24 there was a negotiation here, Your Honor, that ultimately led
25 to the number that was reached here. But from our perspective,

1 there was, if you will, a similar analysis that took into
2 account anticipated cash flows over a period of time, took into
3 account maybe different difficulties that may be attendant to
4 collecting monies from the real estate loan than from the
5 commercial loan. But it was a very, as I understand it,
6 quantitative analytical analysis from the bottom up which
7 ultimately resulted in the numbers that were put on the table.
8 It was as complicated and as simple as that and, as I said, a
9 little more complicated perhaps than Spruce and Verano. And
10 there was just simply a negotiation back and forth with
11 frequent communications with the committee's financial advisors
12 who were privy to information relating to the underlying assets
13 so that they were in a position to advise the committee as to
14 whether or not they believe that, from the debtors'
15 perspective, it was a reasonable transaction.

16 I hope I've illuminated this a bit, Your Honor.

17 THE COURT: You have in a very lawyer-like way.

18 MR. KRASNOW: I try, Your Honor. I've been doing it
19 for a while.

20 THE COURT: I can tell. But I guess I'll get some
21 more color when I hear from others. I gather that the pricing
22 of the notes was the product of a financial analysis, the
23 assumptions underlying such analysis having been fundamentally
24 agreed to by the parties. No doubt, based upon my experience,
25 different analysts looking at the same set of facts might come

1 up with a different value or a different set of assumptions.
2 And that's the zone for negotiability in my experience.

3 But I don't know what happened here. And since this
4 is a very complex transaction that's being expedited by virtue
5 of the fact that it's not contested, I want to understand why
6 each group that might otherwise have raised significant
7 questions concerning the fairness of this transaction is on
8 board. This is an opaque transaction from my perspective. I
9 can't tell how the numbers were derived. And I know that
10 you've done an excellent job of explaining at least generally
11 how this occurred. I don't know who negotiated with whom. I
12 don't know which positions were taken on one side or the other.
13 I don't know what alternatives existed on the Bankhaus side or
14 on the Lehman side to generate more value in a different way.

15 Because this is a simultaneous transaction, unusual in
16 that respect, that I'm being asked to approve at the same time,
17 I don't think I have enough yet based upon the colloquy of
18 counsel and what I view as a fairly limited declaration to say
19 yes to this transaction. But I'm prepared to do that. I'm
20 asking the parties to supplement the record now.

21 MR. KRASNOW: Your Honor, what we did do, I've
22 described what we did with respect to the creditors' committee.
23 But we did have discussions with the ad hoc group and their
24 advisors and with LBI to advise them as to how the process was
25 conducted.

1 THE COURT: I'd like to be advised. This is a
2 bankruptcy court hearing in which I'm being asked to approve a
3 significant transaction and I view the record as deficient.

4 MR. KRASNOW: Your Honor, I'd be prepared to put Mr.
5 Ehrmann on the stand and --

6 THE COURT: I think that might be a good idea.

7 MR. KRASNOW: Okay.

8 THE COURT: And if you'd like to take a break to talk
9 with him in advance and to confer with other parties so we can
10 make this as efficient as possible, we can do that.

11 MR. KRASNOW: Your Honor, if we can take a short
12 break, that would be fine.

13 THE COURT: Let's take a break until 11 a.m.

14 MR. KRASNOW: Thank you, Your Honor.

15 (SASCO purchase agreement with its Amendment A, Exhibit A to
16 the motion, the Spruce-Verano purchase agreement with its
17 Amendment A, Exhibit B to the motion, and the plan settlement
18 agreement, Exhibit C, as well as an amended proposed order,
19 Exhibit D to the motion, were hereby received into evidence as
20 of this date.)

21 (Declaration of Daniel Ehrmann, Exhibit E to the motion, was
22 hereby received into evidence as of this date.)

23 (Recess from 10:49 a.m. until 11:03 a.m.)

24 THE COURT: Be seated, please.

25 MR. KRASNOW: Your Honor, Richard Krasnow for the

1 Chapter 11 debtors. If I may, I'd like to call Mr. Ehrmann to
2 the stand.

3 THE COURT: Fine.

4 MR. KRASNOW: Mr. Ehrmann?

5 THE COURT: And I need to swear you.

6 MR. EHRMANN: Okay.

7 THE COURT: Please stand and raise your right hand.

8 (Witness sworn)

9 THE COURT: Be seated. And please speak up.

10 THE WITNESS: Yep.

11 DIRECT EXAMINATION

12 BY MR. KRASNOW:

13 Q. Mr. Ehrmann, whom are you currently employed by?

14 A. Alvarez & Marsal.

15 Q. And what role, if any, do you have with the Lehman
16 Brothers Chapter 11 cases?

17 A. I'm currently the co-head of the derivatives team effort
18 and the head of the international effort.

19 Q. How long have you been engaged in those activities?

20 A. Since September 2008.

21 Q. Were you involved in the negotiations with Bankhaus that
22 led to the SASCO, Spruce and Verano purchase agreements that
23 are currently being considered by the Court?

24 A. Yes, I was.

25 Q. Were you a lead negotiator in that regard?

1 A. Yes, I was.

2 Q. Could you, Mr. Ehrmann, describe to the Court the
3 analysis, if any, that Lehman undertook when valuing the Spruce
4 and Verano notes in the context of the proposed transaction
5 with Bankhaus?

6 A. Sure. For Spruce and Verano, as you pointed out
7 previously, the actual analysis was far more straightforward
8 than it was for the SASCO notes given that the actual
9 underlying loans or participations are actively trading in the
10 marketplace.

11 In addition to that, our loans team constantly updates our
12 loan book and, effectively, ensures that the book is constantly
13 mark-to-market. And as a result of that, as part of the
14 transaction, no real analysis was really required.

15 Q. And could you describe the analysis that was undertaken by
16 Lehman in connection with arriving at a proposed purchase price
17 from the debtors' perspective with respect to the SASCO note?

18 A. Sure. On the SASCO side, we actually projected cash flows
19 over a period of time for each of the underlying assets and
20 divided a future cash flow stream which we then discounted back
21 to present based on various assumptions on rate of returns. In
22 addition to that, we actually got some indications from the
23 marketplace on the actual value of the notes; not the
24 underlyings, the actual notes.

25 Q. Mr. Ehrmann, is it correct that the discount to the

1 outstanding balances with respect to Spruce and Verano when
2 concurred to the proposed purchase price is around thirty
3 percent?

4 A. Correct.

5 Q. And the comparable analysis with respect to SASCO is
6 approximately forty-two percent assuming a 625 million dollar
7 purchase price, is that correct?

8 A. Correct.

9 Q. How do you account for the difference in the discount
10 rates between those two sets of notes, if you will?

11 A. Well, it's primarily linked to the timing of the actual
12 realization of the underlying assets. Spruce-Verano has a time
13 horizon of two to three years whereas SASCO -- the actual
14 underlyings have a longer time horizon. Also, you should note
15 that on SASCO, the actual maturity of the note is 2038. And so
16 that was factored into the discount.

17 Q. And is there an expectation on the debtors' part that with
18 respect to each of the three notes that are purchased -- that
19 are being purchased or proposed to being purchased that the
20 estates will realize the full balance outstanding on each of
21 those notes?

22 A. Yeah. For Spruce-Verano, that's correct. On SASCO, it
23 would be the low or the actual notional value of the notes.
24 But it would be higher than the purchase price.

25 Q. Mr. Ehrmann, you were involved in the direct negotiations

1 with the Bankhaus representatives in connection with this
2 transaction.

3 A. Yes.

4 Q. Over what period of time were the negotiations?

5 A. Specifically, on Spruce-Verano and SASCO, we started in
6 earnest the negotiations August of last year. Prior to that,
7 we had negotiations around Bankhaus' SCA claim. And as you
8 pointed out before, a critical part of that SCA claim are the
9 actual -- or is the actual value of the notes. So the reality
10 is that discussions around the values of these assets have
11 taken long than a year, I think.

12 Q. Did the -- are the proposed purchase prices with respect
13 to these three notes the initial offers that were made by the
14 debtors to the administrator?

15 A. No. There was a considerable amount of back and forth
16 with the first offer having been made in August and the final
17 offer having been accepted less than a month ago.

18 Q. And during the course of these discussions, did you have
19 any communications with the financial advisors for the
20 creditors' committee with respect to the status of those
21 negotiations?

22 A. On a very regular basis, yes.

23 MR. KRASNOW: Your Honor, I have no further questions
24 of this witness.

25 THE COURT: Is there anyone who wishes to ask any

1 questions? You're excused. Thank you.

2 THE WITNESS: Thank you.

3 MR. KRASNOW: Your Honor, perhaps it would make sense
4 since Your Honor posed questions of me that really related to
5 Bankhaus and I responded based upon what I knew, that perhaps
6 it would make sense for Bankhaus to make its presentation and
7 respond to a number of the questions the Court had.

8 THE COURT: I mean, that's fine. And I'm also going
9 to hear from counsel for the committee, counsel for the ad hoc
10 group and any other party in interest who wishes to express a
11 perspective but they're the principal parties, I think, that
12 have weighed in on this issue. It's an uncontested matter.
13 I'm not trying to drag it out. I'm just trying to get a
14 sufficient record that I can comfortable approve that which is
15 very familiar to the lawyers but not so familiar to the Court.
16 Based upon my review of the papers, I found this to be less
17 than clear

18 MR. KRASNOW: I apologize for that, Your Honor.

19 THE COURT: And that's not to say that the papers
20 weren't well drafted. It seemed to me that there were issues
21 that were under the surface that I simply wanted to have fully
22 presented in open court.

23 MR. KRASNOW: And, Your Honor, this is close to a
24 billion dollar transaction so we understand that it's
25 appropriate for there to be a thorough airing of transparency

1 to this.

2 THE COURT: That's precisely my point. And I think
3 you understand it.

4 MR. KRASNOW: Thank you, Your Honor.

5 MR. YATES: Your Honor, Farrington Yates with SNR
6 Denton on behalf of Michael Frege, the insolvency administrator
7 for Lehman Brothers Bankhaus AG (In Insolvenz). As opposed to
8 making a formal presentation, I thought I would just try to
9 answer the questions that you asked earlier --

10 THE COURT: Fine.

11 MR. YATES: -- so that we could expedite matters. And
12 I guess the primary question which we're prepared to bring --
13 to put on our own witness to add some more color to give the
14 Court more comfort around this pricing issue so that you can
15 understand clearly why, in our view and in Dr. Frege's view,
16 this is a good deal for the German estate.

17 By way of backdrop, we had also submitted declarations
18 on behalf of Joachim Kuhne, a member of Dr. Frege's team, and
19 Hulmut Olivier, who was formerly with Bankhaus prior to the
20 insolvency proceedings and is not still employed by Bankhaus
21 and working with Dr. Frege. As opposed to making a full
22 proffer, we'll rely on those declarations and ask to submit
23 those into evidence. And we'll supplement with some additional
24 questioning --

25 THE COURT: That's fine.

1 MR. YATES: -- if that's acceptable.

2 (Declarations of Joachim Kuhne and Hulmut Olivier were hereby
3 received into evidence as of this date.)

4 THE COURT: I reviewed those declarations. They don't
5 really go to the question that I --

6 MR. YATES: Sure. No problem.

7 THE COURT: -- posed earlier about how the price was a
8 good price for the estate. But --

9 MR. YATES: Sure.

10 THE COURT: -- I assume that your later submissions
11 will supplement the declarations.

12 MR. YATES: Sure. With that context laid then, as the
13 Court appreciates, the charge to the German administrator under
14 German law is slightly different. Although we've sought
15 approval of the transaction in a Chapter 15 and 363 applies, we
16 believe that this transaction not only comports with what Dr.
17 Frege's duties are in Germany but also comports with what's
18 required under 363 as incorporated in a Chapter 15.

19 Dr. Frege, under German law, must liquidate assets in
20 a commercially reasonable way. And the way that he discharges
21 that duty is he collects information, evaluates the various
22 underlying economics and legal risks with respect to particular
23 assets with a view towards monetizing them in the near future.
24 This is not a reorganization proceeding or even an extended
25 liquidation proceeding, perhaps like Lehman's Chapter 11, but

1 Dr. Frege is charged with liquidating this asset, monetizing
2 the assets and delivering money to its creditors.

3 And so, one of the great benefits of this transaction
4 is that it monetizes these assets of approximately 900 and some
5 odd million dollars which will serve as the basis for a
6 distribution to German creditors later in the year. That's the
7 intent.

8 So one of the driving forces behind the insolvency
9 administrator's desire to have this transaction approved is
10 that it provides the estate cash immediately with a view toward
11 making a distribution -- partial distribution to creditors in
12 the future.

13 Also, with respect to continuing to hold these assets,
14 there are certain risks. There is cost of administration and
15 monitoring the assets. I mean, these are sophisticated complex
16 assets and so that's not an insignificant amount. And there is
17 also risk with respect to the value of these assets
18 deteriorating over time. We've seen the market move up and
19 down. And also, there's a foreign exchange rate volatility
20 issue as well.

21 So it fixes those potential risks right now so that we
22 don't have to worry about those particular issues going
23 forward. And then, as has been described by Mr. Krasnow at
24 length, it fixes the SCA claim which is a large claim in the
25 Lehman estate that has been subject of discussion. But as

1 values move up and down with respect to the underlying notes,
2 the claim also could rise or fall. And so, in the
3 administrator's view, in Dr. Frege's view, it was best to have
4 that fixed now so that there wouldn't be any risk going
5 forward. And as the Court can appreciate, Germany is a
6 personal liability jurisdiction. And so, the administrator --
7 you're absolutely correct in your assessment -- would not
8 propose any sort of transaction to his creditors unless he was
9 absolutely confident that he was going to be discharging his
10 duties under German law to monetize the assets in a
11 commercially reasonable way.

12 Now, you made a comment earlier about you didn't
13 conduct an auction. Our -- and how do we arrive at price.
14 Well, you're right. Our submission, the declaration, didn't go
15 into great detail. However, we did conduct an informal
16 process. And if I call Mr. Olivier to the stand, he will go
17 through the process informally that the insolvency
18 administrator went through to verify in the marketplace that
19 the values for these notes were in a range so that the offer
20 that came from LBHI eventually was within a range that was
21 acceptable. There were not any wide deviations. And that
22 process included hiring their own investment advisors going out
23 to the market. These are sophisticated complex assets. And
24 so the pool of people that could really understand what they
25 might be buying was unfortunately relatively narrow. But in

1 those discussions, they did receive some discussion, some
2 indications of value from these potential purchasers. None of
3 them actually made an offer, the reason being because some of
4 these assets are so complicated they couldn't really figure out
5 how it was all going to work and how they would actually
6 monetize value when they recovered it. But based on those
7 indications of value, we used that -- the administrator used
8 that as the baseline to go into the negotiations with LBHI.
9 And as you've also heard Mr. Krasnow state, the negotiations
10 were lengthy. They were contentious and, clearly, at arm's
11 length from our perspective.

12 But ultimately, based on our informal market testing,
13 the proposals that we received for value from LBHI were within
14 range so that Dr. Frege was comfortable, under German law, that
15 he would be discharging his duty to monetize these assets in a
16 cursory reasonable way.

17 And also, because there was this informal process, we
18 felt confident that if there were any questions about the
19 process and fixing the value that once we explained to the
20 Court and gave a little bit more color to what Bankhaus did to
21 confirm the values that you would ultimately become
22 comfortable, too, hopefully.

23 Unfortunately, some of the process is covered by a
24 confidentiality agreement. So we won't identify names. But if
25 needed, we'll talk about ranges and offers if the Court so

1 desires. But I think that the declaration that was submitted
2 indicated that there was a process and the result of it was
3 that the administrator was confident that the values that were
4 being proposed by LBHI were within a range that would allow him
5 to discharge his fiduciary duties to German creditors.

6 If you'd like, I can bring Hulmut Olivier to the stand
7 and we can go through additional testimony and evidentiary
8 support if the Court so desires.

9 THE COURT: You can do that or you can do it by means
10 of a proffer. Up to you.

11 MR. YATES: Actually, I think I'll bring Mr. Olivier
12 up.

13 THE COURT: Fine.

14 (Pause)

15 THE COURT: Good morning. Would you please --

16 MR. OLIVIER: Good morning.

17 THE COURT: -- raise your right hand?

18 (Witness sworn)

19 THE COURT: Be seated, please.

20 DIRECT EXAMINATION

21 BY MR. YATES:

22 Q. Good morning. Can you state your name for the record,
23 please?

24 A. Good morning. My name is Hulmut Olivier.

25 Q. And are you affiliated with Lehman Brothers Bankhaus?

1 A. I am. I am serving as a managing director and board
2 member of Lehman Brothers Bankhaus.

3 Q. And how long have you been affiliated with Bankhaus?

4 A. Prior to its insolvency in the fall of '08, I was with
5 Lehman Brothers Bankhaus starting in March of 1995 and later
6 appointed to the board in 1998.

7 Q. Are you currently assisting Dr. Michael Frege with the
8 administration of the Bankhaus estate?

9 A. I am indeed.

10 Q. And what are some of your duties with respect to assisting
11 Dr. Frege?

12 A. My core responsibility and duty is to assist Dr. Frege in
13 managing and liquidating the remaining assets of Lehman
14 Brothers Bankhaus and advising him in all financial aspects
15 relating thereto.

16 Q. Are you familiar with assets that are subject to the
17 motion which we refer to as the SASCO, Spruce and Verano notes?

18 A. I am indeed.

19 Q. All right. And you heard the Court's inquiry regarding
20 how value and pricing was established for purposes of the sale.
21 Can you explain to the Court how Dr. Frege tested the prices in
22 the marketplace?

23 A. Sure. I would structure my remarks in the following way.
24 We basically had to go through four stages. One is to address
25 the issue of information disparity. In other words, we had to

1 create a level playing field with regard to the notes in
2 question and, in particular, the underlying assets. That was
3 stage 1 of the process. And, as you just referred to, we
4 conducted -- or we concluded a -- and a number of
5 confidentiality agreements with LBHI. So that some of the
6 information which we lacked could be made available to us. So
7 that's -- that was point 1.

8 Point 2 was to create our own process around valuation.
9 And we did that in a three-prong way. Number one, we developed
10 our own in-house analysis models analyzing and forecasting cash
11 flows. We then also asked external financial advisors to do
12 the same -- using their methodologies and we organized
13 through -- as you mentioned, we retained financial advisors who
14 contacted my participants externally and asked them for their
15 views.

16 The third element was that we had to ascertain the bench
17 whole liquidity/marketability of these securities away from the
18 debtors, away from LBHI, and then conclude by forming a view on
19 what's exclusively referred to as time-valued money. In other
20 words, if we were to give another way, was it having it
21 analyzed -- the underlying cash flows having analyzed the
22 securities in question what is a -- what would an investor
23 impute as their internal requirements as they determined their
24 purchase price.

25 Q. When did you start the process of testing the market

1 speaking closely with respect to these assets?

2 A. We started in earnest just after late summer of last year.
3 And prior to doing that, we had a long run-up period, gestation
4 period, internally where we developed our own models and also
5 identified, to my earlier point, our particular information
6 requirements.

7 Q. Sure. Mr. Olivier, in your view, are the prices for these
8 assets within a reasonable range of the market as you
9 determined informally?

10 A. I believe so. And again, I would like to distinguish
11 between, on the one hand, Spruce and Verano and, the other,
12 SASCO. As was explained earlier, I think there was a very
13 reasonable amount of transparency and understanding of the
14 Spruce and Verano notes. And so, the valuation of the
15 underlying assets wasn't really much in dispute. It really
16 revolved around, again, the time value of money, how much time
17 would need to elapse for these values to be crystallized and
18 what rate of return a would-be purchaser would impute to rack
19 up those values. And also, who would be eligible investors in
20 these notes. And again, we were a mezzanine noteholder and
21 with LBHI and the debtors being senior noteholders, it became
22 very clear, all that based on the input from our external
23 financial advisors that essentially external investors were
24 privy to the information that we were privy to or that the
25 debtors were privy to would not bid aggressively at all for

1 these securities. And essentially, it was a one-horse race.
2 So that was Spruce and Verano.

3 On SASCO, the situation was a lot more complex because, as
4 it was explained earlier, we were dealing with a portfolio of
5 real estate related assets. And the most important asset in
6 that portfolio actually led to a very large exposure which was
7 itself subject to debt for equity swap late last year. And so,
8 we were charged with putting the value on this particular large
9 asset and some of the other major assets and then protecting
10 cash flows on -- again, as we explained earlier, looking at not
11 just the value of allied schemes but also can you actually get
12 the -- can you crystallize the value of the underlying asset
13 and how do you do that bucking just a senior noteholder. And
14 that is the key to the equation. It was not just about the
15 valuation of the underlying. We also had to basically find --
16 advise those who has -- it was also faced with the information
17 disparity of the fact that we're -- these parties do not have
18 the information that we have and did not have the ability as
19 the debtors do to unwind the issuing structure and manage the
20 underlying assets.

21 Q. Mr. Olivier, why is this transaction a benefit to the
22 Bankhaus estate?

23 A. It's likely that based on the factors I've just outlined
24 that -- and what were determined to be reasonable at -- based
25 on our scenario -- those analyses and probability with those

1 scenarios that, again, the crystallization of the sale proceeds
2 and therefore at the time they have money from our perspective
3 leads us to believe that this is a commercially viable
4 transaction.

5 Q. Have the creditors of the German estate approved the
6 transaction?

7 A. They have, certainly, as far as the creditors' committee
8 is concerned and given the fact that it represents the major
9 creditors of Bankhaus who hold a very large majority of
10 Bankhaus debt. We believe that they represent the vast
11 majority of the Bankhaus assembly which you alluded to earlier.

12 Q. Just to give the Court some color on the difference
13 between the committee versus the assembly, when you say that
14 the committee has some of the largest creditors, could you
15 identify those and then give us -- you gave an estimate of the
16 amount of the debt of the estate that they hold -- a total,
17 just a total.

18 A. Well, I don't have all the numbers to hand but,
19 essentially, it's used to identify the major creditors, one
20 being at the German Central Bank, the Bundesbank, on behalf of
21 the European Central Bank. And the other is the so-called
22 German Deposit Protection Fund which compensated nonbank
23 investors in Bankhaus debt and filed insolvency.

24 Q. Between the two of those, about what percentage of the
25 total outstanding debt or claims of Bankhaus does that

1 represent?

2 A. Well, in excess of seventy-five percent.

3 Q. And those -- the members of the creditors' committee will
4 also -- they're also members of the creditors' assembly, is
5 that correct?

6 A. Yes.

7 Q. Okay. And they've indicated to date that they're voting
8 in favor at the assembly meeting of this transaction?

9 A. Yes, to the best of my knowledge.

10 MR. YATES: Your Honor, I don't have any further
11 questions.

12 THE COURT: Thank you. Does anyone else have
13 questions of the witness? You're excused. Thank you very
14 much.

15 MR. YATES: Your Honor, I don't know if -- I know that
16 Mr. Krasnow went through the bases for the relief requested
17 under his motion. To complete the record, I didn't know if you
18 just wanted me to make my brief argument, cover the points and
19 then that would be our presentation with respect to the motion.

20 THE COURT: Fine. Why don't we complete your
21 presentation and then I'll hear from the official committee and
22 the ad hoc group?

23 MR. YATES: All right, Your Honor. We, of course,
24 have sought approval of the sale of these assets and free and
25 clear of liens, claims and encumbrances which we refer to in

1 the motion as interest under 363(f) and 1520 of the Bankruptcy
2 Code. We believe that we've satisfied the requirements to do
3 so under U.S. and under German law. The assets are located
4 here in the United States. The testimony indicates and the
5 proffers -- I'm sorry -- the declarations that there is a sound
6 business justification for the sale. Based on the declarations
7 and Mr. Olivier's testimony, it is the administrator's view
8 that the transaction and the sale of these assets is for fair
9 value and is a discharge of Dr. Frege's duties as the
10 insolvency administrator in a commercially reasonable way under
11 German law. Based on the declarations that were submitted,
12 there are no interests or any claims, et cetera, that have been
13 made with respect to the assets. And there have been no
14 objections to the sale in the Chapter 15 proceedings. The
15 notice was given pursuant to local rules so we believe that
16 satisfies the requisites for satisfying fair notice to parties
17 in interest and creditors.

18 As you've also heard, Your Honor, from Mr. Ehrmann's
19 testimony, and I'm also including the declaration, these
20 negotiations certainly, I think, can be characterized as being
21 at arm's length. They went over a long period of time. There
22 were many exchanges, many participants and, ultimately, we
23 arrived at this transaction. As a result, we have sought in
24 our order a finding that LBHI is a purchaser in good faith and
25 would be entitled to the protections of 363(m) and, as a

1 corollary to that, there would be no application of 363(n).

2 As Mr. Olivier testified to, the German creditors'
3 committee has approved. That represents about seventy-five
4 percent of the creditors of the Bankhaus estate. And the deal
5 is still subject to creditors' assembly approval which will
6 come forward on the 14th of April of this year. But again, as
7 Mr. Olivier testified to, the largest creditors support this
8 transaction so we're confident that that will ultimately be
9 approved.

10 We've also asked in our motion to have the order
11 become effective and enforceable immediately. And as a result,
12 based on the evidence, the submissions, argument, et cetera,
13 and the fact that it's unopposed, we'd ask for the Court to
14 approve the motions.

15 THE COURT: Okay. Thank you.

16 MR. YATES: Thank you.

17 THE COURT: Let's start with the creditors' committee.

18 MR. FLECK: Good morning, Your Honor. Evan Fleck with
19 Milbank, Tweed, Hadley & McCloy on behalf of the official
20 committee. As Your Honor noted, and it was noted by Mr.
21 Krasnow, the official committee is supportive of the Court's
22 approval of the note purchase agreements that are before the
23 Court. We did file a statement on the docket setting forth the
24 reasons for that support. And they are principally threefold,
25 and they've been discussed by other parties here. But it's the

1 control of the structures that the entry into these agreements
2 and the approval of these agreements will provide to the
3 estates; the favorable pricing that we're comfortable will
4 result in a profit to the estates; and also the fixing of the
5 claim under the SCA.

6 We've all been very careful to say that the -- we're
7 not here for approval of the settlement agreement -- plan
8 settlement agreement with the Bankhaus estate, and I'm not
9 standing up to say anything different, Your Honor. Although I
10 would note -- and I would emphasize that the note purchase
11 agreements themselves stand on their own. We think that --
12 we're very comfortable that they represent a sound exercise of
13 the debtors' business judgment. They are appropriate, and they
14 will benefit the creditors of the U.S. estates on their own.
15 We are also pleased with the progress and with, in fact, the
16 results of those discussions and how they fit in to the overall
17 plan settlement, which will be laid out more fully for the
18 Court in connection with the plan.

19 In light of the Court's inquiries so far during this
20 hearing, we thought it was appropriate to address specifically
21 the committee's role in the process and how we understood the
22 agreement and why we are supportive of it. And there -- as the
23 Court is aware, there have been many times that we've come
24 before the Court with varying degrees of involvement with
25 transactions that are being proposed by the debtors. They

1 range from having received notice early on in the process, an
2 opportunity for us to ask questions, subcommittee review and
3 the like.

4 There has not been a transaction brought before the
5 Court that has received greater attention by the creditors'
6 committee, for the reasons set forth in our statement -- I
7 think they're obvious, including the size of the transaction.
8 I want to add a little bit more granularity to that.

9 The creditor's committee met more than six times
10 specifically to discuss aspects of this transaction. Three of
11 those sessions were actually meetings to discuss just the note
12 purchase agreement and the terms. During one of those meetings
13 we were joined by representatives of the debtors for a
14 discussion between the members of the committee and the
15 debtors, with respect to the terms of the note purchase
16 agreements.

17 In addition, as was referenced a few times this
18 morning, Houlihan Lokey, one of the financial advisors to the
19 creditors' committee, participated directly in the
20 negotiations. Early on in the process, it was the case that
21 Houlihan Lokey received updates and regular updates from the
22 debtors about the status of the discussions. We, as counsel,
23 also received updates from Weil Gotshal and through our
24 intermittent participation in the foreign administrator
25 protocol discussions.

1 As the concept of the note purchase agreements
2 crystallized, in fact, just before they became crystallized,
3 the representatives from Houlihan Lokey began to participate
4 directly in the negotiations, both in person in Germany, as
5 well as in discussions here and the telephonic negotiations
6 that were discussed here. It is absolutely a fair
7 characterization to say that based upon our experience and the
8 committee's understanding through Houlihan Lokey that these
9 were certainly arm's-length -- Mr. Krasnow's characterization
10 of them as arduous is also accurate and probably charitable --
11 these were very difficult negotiations, Your Honor. And I
12 don't think anybody involved with them had a high degree of
13 certainty that we would be here today, in fact, given the fact
14 that there were, at many times, very significant issues that
15 had to get resolved.

16 It brought comfort to the committee that we were so
17 involved in the process, because given the complexities here,
18 sitting on the sidelines, and I think as Your Honor has
19 referenced, perhaps the Court is feeling that today, it is very
20 difficult to understand the give-and-take of these transactions
21 and why we believe these are in the best interests of the
22 estates.

23 From the committee's perspective, we're very
24 comfortable that the parties leveraged upon the different
25 mandates that exist in the different proceedings. That was

1 also the case with respect to the prior transaction from a year
2 ago, where there was -- the parties appreciated an opportunity
3 to purchase assets here again, purchase assets where the
4 Bankhaus estate has a greater focus on liquidation now, and
5 there's an increased flexibility in these proceedings, to see
6 opportunities over a longer time horizon.

7 Your Honor, it's for these reasons that the creditors'
8 committee, again, is supportive of entry into these
9 transactions between the estates and the Bankhaus estate.

10 I have just one final point, and I'm happy to respond
11 to any questions. And it doesn't go to the approval of the
12 transactions. The creditors' committee, as it always does,
13 reaches out to its constituency to gauge its reaction to
14 transactions. We were pleased that in addition to other
15 creditors in the process, that the ad hoc group did file a
16 statement in support.

17 Just for purposes of a clean record -- and again, it
18 doesn't go to the overall approval of the transaction because
19 they obviously are supporting it. The committee respectfully
20 disagrees with the ad hoc group's characterization of the steps
21 and the role that they played in the process before the filing
22 of the motion. I only mention that, Your Honor, it's not about
23 who gets credit for a transaction but the committee does
24 believe it's important, for purposes of other parties that are
25 going to be negotiating and are in negotiations with the

1 debtors now, for resolution in connection with the plan that
2 parties have confidence that settlements that are proposed by
3 the debtors, and in this case are supported by the creditors'
4 committee, are sound, reasoned and have been the subject of
5 considerable negotiations. We think that's the case here.

6 And for those reasons and all the others I've stated,
7 as well as those in our written submission, we are supportive
8 of the transaction.

9 THE COURT: Thank you very much.

10 MR. FLECK: You're welcome.

11 MR. UZZI: Your Honor, Gerard Uzzi of White & Case on
12 behalf of the ad hoc group of Lehman Brothers creditors. Your
13 Honor, perhaps interestingly, before the hearing, I was I guess
14 what could be characterized as chit-chatting with Mr. Yates,
15 saying, gee, just from an intellectual standpoint, this is an
16 interesting hearing for some of the reasons why Your Honor has
17 noted. And we posited as to what would happen if somebody was
18 actually objecting to this hearing given that we have a Chapter
19 15 case going on and a Chapter 11 case going on. And I think
20 the conclusion we reached which, for what it's worth, is the
21 reason why this can happen is because there's different
22 perspectives at play here. And I do think there's probably --
23 and I'm no Chapter 15, certainly no German insolvency law
24 expert -- there's a perspective for the Chapter 15 estate that
25 makes sense for the Chapter 15 estate. We obviously focused on

1 whether this made sense for the Chapter 11 estate. But I do
2 think that those things can coexist, Your Honor.

3 So how did the ad hoc group look at this? The easy
4 part, Your Honor, I'll deal with first, is our concerns about
5 what Mr. Krasnow referred to as a poison pill. We appreciate
6 Mr. Krasnow's statements regarding it was never the debtors'
7 intent to put a poison pill in this. We never thought it was
8 the debtors' intent to put a poison pill in this. But we did
9 have concerns about some ambiguity in the language. We raised
10 it to the debtors. The debtors raised it with the Bankhaus
11 administrator. And those issues have been clarified and
12 resolved. And I do want to say we appreciate the efforts of
13 both the debtors and the Bankhaus administrator, and
14 particularly Mr. Krasnow and Mr. Yates, in getting rid of what
15 could have been some noise there.

16 With respect to the economics, Your Honor, you know,
17 we did file a statement in support. But we look at this under
18 not necessarily what I'd say a legal standard. It is a legal
19 standard. But we look at this from a standpoint, if we were an
20 objecting party, what would we have to do to upset this
21 transaction. That is, are we able to say that this doesn't
22 make sense for the debtor.

23 And so, our statement of support in our analysis of
24 this looks at it from that context. And so we weren't looking
25 at this as is this a great deal, even is this a good deal; it's

1 really, is this a rational deal. And from that standpoint, we
2 think it's a rational deal, and therefore we support the deal.

3 With respect to what we looked at, Your Honor, first
4 and foremost, you've heard some testimony as to the pricing of
5 the individual notes. While we did consider each part of the
6 transaction, we've always understood this to be one all-in
7 transaction. That is, the LBHI estate or the debtors -- let me
8 say the Chapter 11 debtors -- didn't have the ability to
9 cherry-pick. And had we had the ability to cherry-pick, we
10 might like one part of the transaction and not another. So we
11 looked at this as in the context of the whole.

12 And what we understand with respect to price overall,
13 Your Honor, is while there's an analysis that underlies it, it
14 is principally the product of a negotiation. And when our
15 question is to the debtors, well, how did you arrive at this
16 price, it's, well, that's the best deal we could get.

17 Obviously, we, from our standpoint, would prefer a bigger
18 discount to the notes. But it's the best deal they could get.
19 So from our standpoint, we have a deal that's on the table.
20 And it's really a yes or no and whether it's better to accept
21 this transaction today, given the totality of the
22 circumstances, or would it be better to say this doesn't make
23 sense, walk away, and let's see what else we could get done.

24 In the specifics of what we were considering, Your
25 Honor, the Spruce and Verano notes, you've heard some

1 references to market prices and the like. One of the things we
2 considered carefully was the fact that they are mezzanine
3 notes. And because of that, there is a risk as to the
4 valuation and what might actually be derived. And so
5 therefore, you know, we were considering when we look at
6 everything, the potential downside, and we do think that
7 there's downside in the transaction, so are we covered on the
8 downside.

9 With respect to the SASCO notes, Your Honor, I think
10 it's worth noting, and it was -- it's in the testimony, but
11 it's something we considered also, that the SASCO notes are
12 backed by real estate assets. The consequence of that, Your
13 Honor, is that it takes -- and these are what I understand,
14 Your Honor, not just plain vanilla real estate assets, these
15 are sophisticated transactions that back up sophisticated
16 notes. The consequence of that is that it takes a certain
17 level of expertise, and probably a considerable level of
18 expertise, to manage those assets. LB -- the debtors -- the
19 Chapter 11 debtors have that expertise. I don't believe the
20 Bankhaus trustee or administrator has the expertise.

21 So this, Your Honor -- and I'm not here to make the
22 case on the Bankhaus part of it -- but this is a situation, I
23 think, where you can look at this a little bit as a strategic
24 transaction, whereby the notes themselves, the SASCO notes,
25 make more sense being held by the Chapter 11 debtors than they

1 make sense being held by the Bankhaus debtors. And you've
2 heard also some references to imperfect information and the
3 ability to manage those assets.

4 We were focused also on what's been referred to -- and
5 I'm not sure this word has been used -- but the hundred million
6 dollar penalty, that is, the LBHI estate would have to pay a
7 hundred million dollars more under certain circumstances --

8 THE COURT: You're the first person to use the term
9 "penalty".

10 MR. UZZI: Okay. Well, there's an incremental charge,
11 let's say, if certain conditions aren't met. We analyzed it
12 differently, Your Honor. We said, instead of 625 with maybe
13 having to pay 100 million dollars more, we said let's look at
14 as if this is 725 and maybe we can get a further 100 million
15 dollar discount. Because I think it's worth noting, Your
16 Honor, that 100 million dollars is a potential admin claim.
17 It's day-one cash that gets paid to the Bankhaus administrator.

18 If you look at the contingencies, it's tied
19 principally to the entitlements under a plan of reorganization.
20 Under the debtors' current plan and their current valuation,
21 LBHI creditors would receive around -- rough numbers -- twenty
22 cents -- just to make the -- I think it's twenty-one and a half
23 cents, but just to make the math easy, twenty cents. That
24 equates to a 500 million dollar claim. I mean, that's a
25 material claim, Your Honor.

1 And so, whether it's going to make sense to actually
2 trigger the 100 million dollars when we're looking at 500
3 million dollars in claims that that equates to, may be paid out
4 over time, in addition to the 6 and a half billion,
5 approximately, claims that is referenced in the plan support
6 agreement, that 100 million may very well come into play. So
7 we wanted to analyze it under, let's presume it's triggered,
8 and maybe we can ultimately get a better deal, and there'll be
9 tradeoffs in not triggering it. And at 725, again, we thought
10 it was still rational.

11 The last point, I think, Your Honor, with respect to
12 the notes themselves, particularly the SASCO notes, is that we
13 do understand -- and I think there was at least some innuendo
14 in the testimony that there is what I would refer to as some
15 hair on these notes with respect to disputes already, not
16 surprisingly, between Bankhaus and the Chapter 11 debtors, with
17 respect to the entitlements of underlying assets under the
18 notes. That, Your Honor, I raise solely because you asked a
19 question, well, why not do a third-party auction. Yeah, it's
20 possible. But I think you have to take into consideration the
21 fact that there are underlying issues that might make it
22 difficult to actually see that through.

23 And so one of the things that is happening here, and
24 one of the things we considered, is the reduction of some of
25 the noise that relates to asset allocation issues just

1 generally in the case. So this is going to have a benefit,
2 incrementally, to seeing all of us through to the end here.

3 Of course, what you give with the left hand, you
4 some -- or what you get on the left hand, sometimes you give
5 away on the right hand. There is a reservation of rights in
6 the order now regarding the Chapter 11 debtors' estates'
7 relative rights with respect to this transaction. So there are
8 other, let me say, inter-estate issues that are now ripening as
9 a result of this transaction. That will be dealt with
10 separately, Your Honor. We welcome the opportunity to
11 participate in those discussions as well.

12 But with respect to the transaction that is before the
13 Court today, we do support the transaction. We don't believe
14 it's a great transaction. We believe it's a rational
15 transaction. And since it's rational for the debtors' estate,
16 we believe it's likely rational for the Bankhaus estate too.
17 We at least believe the two can coexist together. Your Honor,
18 that's really all I have to say. If you have questions of me
19 on how our group looked at this, I'm happy to answer them.

20 THE COURT: No, I don't have any questions. Thank you
21 very much.

22 MR. UZZI: Thank you, Your Honor.

23 THE COURT: Is there anyone else who wishes to be
24 heard?

25 MR. LEE: Briefly, Your Honor. Kenneth Lee from

1 Hughes, Hubbard & Reed for the SIPA trustee. As Mr. Krasnow
2 noted, the SIPA trustee did file a statement last week stating
3 that it did not object to the transaction. Since that time, we
4 have had further conversations with advisors to LBHI and
5 received further information from them concerning the
6 transaction. And the SIPA trustee is increasingly comforted
7 that this is an exercise of the sound business discretion of
8 the debtors. And so we also support the transaction.

9 I would also point out that -- and I don't think this
10 is necessary to go into in excruciating detail -- but the SIPA
11 trustee does have continuing interests -- LBI does have
12 continuing interests in certain of SASCO notes, and that since
13 we believe and understand that this transaction does not affect
14 any of those rights, we just continue to reserve our rights and
15 otherwise support the transaction, because it doesn't affect
16 us.

17 THE COURT: Okay.

18 MR. LEE: Thank you, Your Honor.

19 THE COURT: Mr. Krasnow, do you have anything more to
20 say, or --

21 MR. KRASNOW: Your Honor, I was just going to point
22 out -- Mr. Uzzi alluded to it -- in terms of the black-line
23 order that we filed with the Court on Friday, it does contain a
24 rather lengthy paragraph that emanates from discussions that
25 were had with certain LCPI creditors who raised questions as to

1 whether or not LCPI should have an interest in some of the
2 notes that we are acquiring.

3 We indicated in the pleadings why we thought it was
4 appropriate for LBHI to be the purchaser of the notes. But in
5 any event, the paragraph that was added basically is a
6 reservation of rights, so it's not an issue that needs to be
7 addressed or considered in the context of today's hearing.

8 I would just say that for the reasons that you've
9 heard from all parties, we would, again, request that the Court
10 approve the transactions in the Chapter 11 cases. Thank you,
11 Your Honor.

12 THE COURT: Fine. I will approve the motion of LBHI
13 relating to the two note purchase agreements, as well as the
14 motion by LB Bankhaus AG for an order approving these
15 agreements. The hearing in these parallel proceedings were
16 uncontested. But for all practical purposes, we've had a full
17 record, as if someone had been an objector, thereby giving the
18 Court deeper insight as to the nature of the transaction than
19 at least I was able to discern from a review of the various
20 pleadings in anticipation of today's hearing.

21 I'm satisfied that the transaction is a reasonable
22 one, both from the perspective of the Chapter 11 estate and
23 from the perspective of Lehman Brothers Bankhaus. I note that
24 there are different objectives and different time horizons
25 applicable to each of these cases, and that as a result of

1 those differences, it became possible for the parties to reach
2 an agreement that satisfied the needs of both sides.

3 As to the pricing question, which I raised during Mr.
4 Krasnow's opening remarks, I suppose I'm satisfied. Although I
5 still have some questions as to how the discounted amounts came
6 to be, I understand the negotiations to have been arm's-length
7 and protracted. I'm satisfied with Mr. Ehrmann's testimony and
8 with Mr. Olivier's testimony on the subject, and recognize that
9 in a transaction such as this, we're not achieving market value
10 as much as we are achieving a negotiated number which takes
11 into account the particulars of these highly structured assets.

12 One of my takeaways, particularly from the Bankhaus
13 presentation, is that given the so-called information disparity
14 and the underlying complexity of the asset base, which
15 represents the real measure of value of the notes, it would
16 have been difficult to structure a true auction for these notes
17 that would produce robust competitive bidding. Moreover, given
18 the relationship in the capital structure between Bankhaus and
19 the Lehman debtors, a minority position or mezzanine position
20 might not be all that attractive to a third-party purchaser.

21 Under all the circumstances, I view the transaction as
22 not only a rational transaction, as described by Mr. Uzzi, but
23 as a creative and productive one. While not described at
24 length in today's hearing, it is apparent to the Court that the
25 transaction also is an important building block in the plan

1 process. That does not play any role in the Court's decision
2 to approve these purchase agreements, but it is, I believe, a
3 useful context in which to view the current motions.

4 For the reasons stated, I'll enter the order in the
5 form presented. And if there's nothing further, we're
6 adjourned.

7 (Whereupon these proceedings were concluded at 11:58 a.m.)
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I N D E X

T E S T I M O N Y

WITNESS	EXAM BY	PAGE	LINE
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Hulmut Olivier	Mr. Yates		

E X H I B I T S

DEBTOR	DESCRIPTION	ID.	EVID.
---	Declaration of Andrew Grapkowski		10
---	Exhibit A to debtors' motion seeking approval of two note purchase agreements with Lehman Brothers Bankhaus AG (in Insolvenz), SASCO Agreement		29
---	Exhibit B to debtors' motion seeking approval of two note purchase agreements with Lehman Brothers Bankhaus AG (in Insolvenz), Spruce- Verano Agreement		29

I N D E X, cont'd

E X H I B I T S

DEBTOR	DESCRIPTION	ID.	EVID.
---	Exhibit C to debtors' motion seeking approval of two note purchase agreements with Lehman Brothers Bankhaus AG (in Insolvenz), Plan Settlement Agreement		29
---	Exhibit E to debtors' motion seeking approval of two note purchase agreements with Lehman Brothers Bankhaus AG (in Insolvenz), declaration of Daniel J. Ehrmann of Alvarez & Marsal		29
BANKHAUS	DESCRIPTION	ID.	EVID.
---	Declarations of Joachim Kuhne and Hulmut Olivier		36

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R U L I N G S

DESCRIPTION	PAGE	LINE
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Stipulation re motion of Edgewood Management LLC seeking return of \$505,936.13 from LBHI to Edgewood Management LLC approved	9	4
Motion of Lehman Brothers Holding Inc. and Lehman Commercial Paper Inc. for order approving the sale of 80,000 shares of Quadrant Structured Products Company Ltd. to Quadrant for \$90,000 in cash consideration approved	10	25
Motion of LBHI relating to two note purchase agreements, and motion by LB Bankhaus AG for order approving these agreements approved	61	10

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
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Date: March 24, 2011